LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
APR 15 1952
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 195.

JAMES RUTKIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

MOTION TO STAY ISSUANCE OF MANDATE.

EDWARD HALLE,
Counsel for James Rutkin, Petitioner,
125 Broadway,
New York City, N. Y.

Arthur W. Cross, Inc., Law Printers, 71-73 Clinton St., Newark 5, N. J., U. S. A.

IN THE

Supreme Court of the United States

OCTOBER TERM 1950.

No. 195.

JAMES RUTKIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

MOTION TO STAY ISSUANCE OF MANDATE.

The petitioner, James Rutkin, moves the Court that the mandate be stayed until the Court renders a decision on his petition for rehearing for the following reasons:

1. Petitioner, through his counsel, requested an enlargement of the time for filing a petition for rehearing and Mr. Justice Burton granted an additional fifteen days which expires on April 23, 1952. Counsel has prepared the peti-

tion for rehearing and it will be filed together with this petition.

2. There is now pending in the United States District Court for the Southern District of New York an action in contract for $22,000,000.00 in which petitioner is the plaintiff, entitled James Rutkin, plaintiff against Joseph Reinfeld, Samuel Bronfman, Abraham Bronfman, Harry Bronfman and Alan Bronfman, individually, and as co-partners doing business under the style and name of Bronfman Interests and Distillers Corporation—Seagrams Ltd., Defendants, Civil Action No. 46-509. Many of the same issues are involved in the civil action as were involved in the criminal action against petitioner. That suit is set down for pretrial conference on the 18th day of April, 1952, and petitioner is informed by counsel in that case that it will be reached for trial during May or June of 1952. The Petitioner's continued liberty is essential to the adequate preparation of the civil action. Furthermore, Petitioner must be present at the trial because much of the case depends on his testimony.

3. In the civil action a supplemental complaint had been issued charging defendants with conspiracy to cause petitioner to be indicted for income tax evasion and asking additional damages of $500,000.00. The indictment in question is the one upon which petitioner has been convicted and which is presently before this court. Discovery proceedings in the civil action have produced evidence which has given leads to additional evidence which counsel for petitioner believes will prove the existence of the conspiracy. Petitioner now knows that the affidavit of Joseph Reinfeld which was presented to the Grand Jury which indicted him

was dictated on or about December 12, 1949, in the office of Theodore Kiendl, Esq. of the firm of Davis, Polk, Wardwell, Sunderland & Kiendl, Esqs., attorneys for Joseph Reinfeld in the civil action, following a conference between Kiendl and an attorney from the office of Arthur Garfield Hays, representing Abner Zwillmn. He now knows that on April 12, 1950 Charles Tyne, Esq. the assistant United States Attorney who tried the criminal case, attended a conference in Mr. Kiendl's office at which Reinfeld was present. He now knows that Joseph Nunan, Esq., former Commissioner of Internal Revenue was retained by Reinfeld through some of Reinfeld's corporations while the civil suit was pending in New York. Mr. Nunan once warned petitioner that he would be indicted if he did not settle the civil suit. In January of 1952, more than a year after the trial of the Criminal Case, Joseph Reinfeld testified in the pretrial discovery proceedings in the New York suit that of the $385,000.00 which was paid to Zwillman and Stacher, only $133,000.00 came directly from Browne-Vintners and the balance came from Reinfeld's safe deposit vaults; the same vaults from which Rutkin's $250,000.00 was taken. This contradicts his testimony at the criminal trial. Petitioner's continued liberty is essential in order that he may aid counsel in tracking down certain other evidence presently no available.

4. Since the opinion was handed down by this Court, petitioner has learned of the existence of a new witness, Joseph A. Frayne, a former government officer, honorably retired, and of unimpeachable reputation. This witness can give evidence tending to show that Reinfeld, the principal government witness, perjured himself at the criminal trial, and that Holtz, the only corroborative witness also

perjured himself. This evidence was unknown to petitioner at the time of the trial. Petitioner learned for the first time on March 27, 1952, of the nature of the testimony the witness could give. An affidavit has been taken for the purpose of moving for a new trial on the basis of newly discovered evidence.

5. In addition to his own testimony the new witness gave petitioner substantial leads to further evidence which may be uncovered by diligent inquiry. The continued liberty of petitioner is essential in order that this new evidence be uncovered.

6. Although petitioner is prepared to move for a new trial in the United States District Court for the District of New Jersey on the grounds of newly discovered evidence, he feels that the trial court will be reluctant to decide his motion while the petition for rehearing is pending before this court. A petition for new trial on the basis of newly discovered evidence cannot be granted while the case is pending on appeal. Federal Rules of Criminal Procedure, Rule 30.

7. Petitioner asserts that there is substantial merit to petitioner's request for rehearing and counsel informs him that they believe that the court will grant a rehearing and a new trial. In the interest of orderly procedure it is respectfully submitted that the mandate should be stayed until the petition for rehearing is granted or denied.

WHEREFORE, petitioner moves this Court that the issuance of the mandate of this court in the above entitled cause be stayed pending the determination of the petition for rehearing,

And he further, moves this court that if the petition for rehearing is granted, the mandate be stayed until such time as there is a final determination in the matter.

James Rutkin,
Petitioner.

James Rutkin has read the foregoing motion and all matters and things therein contained are true to the best of his knowledge and belief.

James Rutkin,
Petitioner.

Subscribed and sworn to at Newark, New Jersey the 17th day of April, 1952.

Josephine G. La Malfa
Notary Public of New Jersey
My Commission expires Aug. 30, 1956

The undersigned counsel for petitioner hereby certifies that the foregoing motion for stay of mandate is made in good faith and not for purpose of delay.

Edward Halle,
Counsel for Petitioner.